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4/24/01
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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DARRELL G. OBER,
Plaintiff

vs.

PAUL EVANKO,
MARK CAMPBELL,
THOMAS COURY,
JOSEPH WESTCOTT,
HAWTHORNE CONLEY,
Defendants

CIVIL ACTION NO. 1:CV-01-0084

FILED
HARRISBURG, PA

APR 23 2001

O R D E R

MARY E. D'ANDREA, CLERK
PER *9/18* DEPUTY CLERK

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

Plaintiff's complaint was filed in this matter on January 16, 2001. On March 16, 2001 defendants filed a motion to dismiss and a brief in support.

On April 2, 2001, plaintiff filed a brief in opposition to defendants' motion and in addition filed a motion to amend his complaint. Attached to the latter motion is the proposed amended complaint, marked Exhibit A. On April 19, 2001, defendants filed a motion to dismiss or strike the plaintiff's amended complaint. This motion has not yet been briefed. Plaintiff's April 2, 2001 filing has caused certain confusion, and this order is intended to clarify and correct any uncertainty.

Federal Rule of Civil Procedure 15(a) provides that a party may amend a pleading once at any time before a responsive

pleading is served. A motion to dismiss is not within the definition or description of "pleading" (Fed. R. Civ. P. 7).

In order to rectify the impasse that has been created by plaintiff's filing of April 2, 2001, it is Ordered as follows:

a) Defendant's motion to strike plaintiff's amended complaint (doc. no. 9) is granted, and plaintiff's motion to file an amended complaint (doc. no. 6) is stricken from the record in its entirety.

b) Plaintiff is afforded ten (10) days to file an amended complaint, as permitted by Fed. R. Civ. P. 15(a).

c) Defendant is afforded ten (10) days thereafter to file a motion to dismiss or a responsive pleading.

d) Defendants shall brief any motion pursuant to local rules. Any such brief shall not incorporate prior briefs and must stand on its own.

e) Defendants' motion to dismiss (doc. no. 4), filed March 16, 2001, is dismissed as moot.

f) Plaintiff's counsel shall hereafter strictly comply with federal and local rules of procedure.



William W. Caldwell
United States District Judge

Date: April 23, 2001

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

* * MAILING CERTIFICATE OF CLERK * *

April 23, 2001

Re: 1:01-cv-00084 Ober v. Evanko

True and correct copies of the attached were mailed by the clerk
to the following:

Don Bailey, Esq.
4311 N. 6th St.
Harrisburg, PA 17110 Fax No.: 717-221-9600

Syndi L. Guido, Esq.
Office of General Counsel, PA Governor's Office
333 Market St.
17th Floor
Harrisburg, PA 17120 Fax No.: FAX: (717) 787-1788

Joanna N. Reynolds, Esq.
Pennsylvania State Police
1800 Elmerton Avenue
Harrisburg, PA 17110

cc:

Judge	()	() Pro Se Law Clerk
Magistrate Judge	()	() INS
U.S. Marshal	()	() Jury Clerk
Probation	()	
U.S. Attorney	()	
Atty. for Deft.	()	
Defendant	()	
Warden	()	
Bureau of Prisons	()	
Ct Reporter	()	
Ctroom Deputy	()	
Orig-Security	()	
Federal Public Defender	()	
Summons Issued	()	with N/C attached to complt. and served by: U.S. Marshal () Pltf's Attorney ()
Standard Order 93-5	()	
Order to Show Cause	()	with Petition attached & mailed certified mail to: US Atty Gen () PA Atty Gen () DA of County () Respondents ()

Bankruptcy Court ()
Other _____ ()

MARY E. D'ANDREA, Clerk

DATE: 4/23/01

BY: *BTB*
Deputy Clerk